IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MEDICAL SUPPLY CHAIN, INC.,	)	
	)	
Plaintiff,	)	
	)	**CIVIL ACTION**
v.	)	
	)	**No. 02-2539-CM**
	)	
US BANCORP, NA, et al.,	)	
	)	
Defendants.	)	
	)	

MEMORANDUM AND ORDER

Pending before the court is defendants' Motion to Strike Plaintiff's Answer to Defendants' Reply (Doc. 30). Also before the court are defendants' Motions to Dismiss (Docs. 21, 23, and 25), plaintiff's Response to defendants' Motions to Dismiss (Doc. 27), and defendants' Reply in Support of all Motions to Dismiss (Doc. 28). As set forth below, defendants' Motions to Dismiss are granted. Defendants' Motion to Strike is dismissed as moot.

I. Background[1]

1. The Parties

Plaintiff is a Missouri corporation which has developed a health care supply strategist certification program. According to plaintiff, defendant US Bancorp NA (hereinafter "US Bancorp") is a bank holding corporation headquartered in Minnesota and is the parent company of the employees and subsidiaries named as co-defendants. Defendant US Bancorp operates banks in several states under the name US Bank.

[1]The court exercises jurisdiction under 28 U.S.C. §§ 1331 and 1337.

Defendant Private Client Group, Corporate Trust, Institutional Trust and Custody, and Mutual Fund Services, LLC (hereinafter "defendant LLC"), is a subsidiary of defendant US Bancorp, also headquartered in Minneapolis. Defendant LLC is the division of defendant US Bancorp that is responsible for escrow accounts for health care systems. Defendant US Bancorp Piper Jaffray, Inc. is the investment banking subsidiary of defendant US Bancorp, and is headquartered in Minneapolis. It has underwriting and investment relationships with healthcare suppliers. Defendant Unknown Healthcare Entity is "believed to be a supplier or purchasing organization who has communicated with US Bancorp, its employees or its subsidiaries about plaintiff for the purpose of obstructing or delaying plaintiff's entry into commerce." Jerry A. Grundhofer is President and CEO of defendant US Bancorp. Defendant Andrew Cesere is Vice Chairman of the US Bancorp trust division. Defendant Susan Paine is the supervisor for US Bank's St. Louis, Missouri corporate trust office. Defendant Lars Anderson is the customer acquisition manager for US Bank's St. Louis, Missouri corporate trust office. Defendant Brian Kabbes is Vice President of Corporate Trusts for US Bank.

B. Plaintiff's Claims

Plaintiff contends defendants engaged in conduct violating (1) the Sherman Antitrust Act; (2) the Clayton Antitrust Act; and (3) the Hobbs Act. Plaintiff also alleges defendants (4) "fail[ed] to properly train [their] employees on the USA PATRIOT Act or to provide a compliance officer"; (5) misused "authority and excessive use of force as enforcement officers under the USA PATRIOT Act"; and (6) violated "criminal laws to influence policy under section 802 of the USA PATRIOT Act." The complaint further charges defendants with (7) misappropriation of trade secrets, under state law; (8) tortious interference with prospective contracts; (9) tortious interference with contracts; (10) breach of contract; (11) promissory estoppel; (12) fraudulent misrepresentation; and (13) violation of the covenant of good faith and fair dealing. Plaintiff seeks over $943

million in damages and declaratory relief.[2] Defendants request dismissal of the Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) on the grounds that plaintiff has failed to state a claim for which relief can be granted.

On March 12, 2002, plaintiff's President and CEO, Sam Lipari, began a process of selecting a national bank to provide services including nationwide checking, escrow services, credit facilities, and other banking services. Mr. Lipari opened a corporate account with US Bank on or about April 15, 2002. On October 1, 2002, plaintiff contacted a US Bank employee at the Noland Road, Independence, Missouri branch of US Bank. Plaintiff requested the bank to provide escrow services. Defendants ultimately denied plaintiff's request, and plaintiff claims it was damaged as a result.

II. Legal Standard for Motions to Dismiss

The court will dismiss a cause of action for failure to state a claim only when it appears beyond a doubt that the plaintiff can prove no set of facts in support of the theory of recovery that would entitle him or her to relief, *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957); *Maher v. Durango Metals, Inc.*, 144 F.3d 1302, 1304 (10th Cir. 1998), or when an issue of law is dispositive. *Neitzke v. Williams*, 490 U.S. 319, 326 (1989). The court accepts as true all well-pleaded facts, as distinguished from conclusory allegations, *Maher*, 144 F.3d at 1304, and all reasonable inferences from those facts are viewed in favor of the plaintiff. *Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984). The issue in resolving a motion such as this is not whether the plaintiff will ultimately prevail, but whether he or she is entitled to offer evidence to support the claims. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974), *overruled on other grounds*, *Davis v. Scherer*, 468 U.S. 183 (1984).

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[2]On January 9, 2003, the Tenth Circuit affirmed this court's order denying plaintiff's requests for preliminary injunction.

III. Analysis

A. Sherman Act (Count I)

In Count I of the Amended Complaint, plaintiff alleges defendants have violated sections 1 and 2 of the Sherman Act, 15 U.S.C. §§ 1 and 2.

1. Section 1

A plaintiff must plead three elements to state a claim under § 1 of the Sherman Act: (1) a contract, combination, or conspiracy among two or more independent actors; (2) that unreasonably restrains trade; and (3) is in, or substantially affects, interstate commerce. 15 U.S.C. § 1; *TV Communications Network, Inc. v. Turner Network Television, Inc.*, 964 F.2d 1022, 1027 (10th Cir. 1992); 1 Irving Scher, et al., *Antitrust Adviser* (4th ed. 2001) § 1.04.

With regard to § 1, plaintiff states defendants are a "vertically integrated" entity that exercises monopoly power over "the specific market" of companies seeking to supply new products, services, and technology in the field of health care, because new entrants into the market "are dependent" upon defendants' approval and endorsement. Plaintiff alleges that defendants violated Section 1 by stating that defendants "are believed to be the largest holder of health care supplier equity issues"; that defendants US Bancorp , US Bank, and defendant LLC, as well as US Bancorp Piper are "alter egos" of each other which have, *inter alia*, "completely dominated and controlled each other's assets, operations, policies, procedures, strategies, and tactics"; that defendants use "anticompetitive sole source contracts between their client health care suppliers and health care GPOs [sic] the defendants have developed" in order to inflate the value of equity shares that defendants market; that defendants "operate a conspiracy among their subsidiaries and parent companies" for the purpose of restraining commerce; that defendants rejected plaintiff's application for escrow accounts in order to prevent plaintiff's entry into the

market; and that defendants have acted in furtherance of the conspiracy through a refusal to deal, denial of services, and boycotting or withholding of critical facilities in order to exclude plaintiff from the market.

a. Contract, Combination, or Conspiracy

Plaintiff alleges that defendants have conspired to prevent plaintiff's entry into the market through refusal to deal, denial of services, and boycotting or withholding critical facilities. Defendants contend plaintiff has failed to allege the existence of an agreement among defendants, and that plaintiff cannot show that two or more independent actors were present. Accepting the allegations contained in the complaint as true, the court finds plaintiff has failed to allege a contract, combination, or conspiracy among two or more independent actors, and thus has not stated a claim under § 1.

First, the court finds that plaintiff has not demonstrated that a plurality of actors existed among defendants. In the complaint, plaintiff states that all individuals named as defendants are officers or employees of defendant US Bancorp, and that all business entities named as defendants are subsidiaries of defendant US Bancorp. Officers, directors, and employees of the **same** company cannot conspire with each other to violate § 1, because they cannot comprise the plurality of actors necessary for a conspiracy. As the Supreme Court held in *Copperweld Corp. v. Independence Tube Corp.*:

> [A]n internal "agreement" to implement a single, unitary firm's policies does not raise the antitrust dangers that § 1 was designed to police. The officers of a single firm are not separate economic actors pursuing separate economic interests, so agreements among them do not suddenly bring together economic power that was previously pursuing divergent goals. Coordination within a firm is as likely to result from an effort to compete as from an effort to stifle competition. In the marketplace, such coordination may be necessary if a business enterprise is to compete effectively. For these reasons, officers or employees of the same firm do not provide the plurality of actors imperative for a § 1 conspiracy.

467 U.S. 752, 769 (1984). Likewise, a parent corporation is incapable of conspiring with its wholly owned subsidiaries:

> [T]he coordinated activity of a parent and its wholly owned subsidiary must be viewed as that of a single enterprise for purposes of § 1 of the Sherman Act. A parent and its wholly owned subsidiary have a complete unity of interest. Their objectives are common, not disparate; their general corporate actions are guided or determined not by two separate corporate consciousnesses, but one. . . . If a parent and a wholly owned subsidiary do "agree" to a course of action, there is no sudden joining of economic resources that had previously served different interests, and there is no justification for § 1 scrutiny.

Id. at 771; *see also In re Indep. Serv. Orgs. Antitrust Litig.*, 85 F. Supp. 2d 1130, 1149 (D. Kan. 2000) (following *Copperweld* in finding that coordination among divisions of a corporation does not violate Sherman Act).

Second, the court finds that even if the allegations of conspiracy alleged in plaintiff's complaint encompassed a plurality of actors, plaintiff has failed to state a claim for relief. Here, plaintiff has not pled the existence of a pricing agreement, or agreement of any kind, among the defendants in restraint of trade. "Although the modern pleading requirements are quite liberal, a plaintiff must do more than cite relevant antitrust language to state a claim for relief." *TV Communications Network, Inc.*, 964 F.2d at 1024 (citing *Mountain View Pharmacy v. Abbott Labs.*, 630 F.2d 1383, 1387 (10th Cir. 1980)). A plaintiff must allege sufficient facts to support a cause of action under the antitrust laws. *Id.*; *see also Perington Wholesale, Inc. v. Burger King Corp.*, 631 F.2d 1369 (10th Cir. 1979) (holding that to survive a motion to dismiss, a complaint stating violations of the Sherman Act "must allege facts sufficient, if they are proved, to allow the court to conclude that claimant has a legal right to relief"). Conclusory allegations that the defendant violated those laws are insufficient.

Id. (citing *Klebanow v. N.Y. Produce Exch.*, 344 F.2d 294, 299 (2d Cir. 1965)). The court grants defendants' motion to dismiss plaintiff's claim under § 1 of the Sherman Act.

2. Section 2

Section 2 of the Sherman Act prohibits monopolies in interstate trade or commerce. 15 U.S.C. § 2 ("Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States . . . shall be deemed guilty of a felony."). Conduct violates this section when an entity acquires or maintains monopoly power in such a way as to preclude other entities from engaging in fair competition. *United States v. E.I. du Pont de Nemours & Co.*, 351 U.S. 377, 389-90, (1956); *Instructional Sys. Dev. Corp. v. Aetna Cas. & Sur. Co.*, 817 F.2d 639, 649 (10th Cir. 1987).

Plaintiff states defendants "have violated Section 2," and that they "have acquired, maintained and extended their monopoly power through improper means, including attempting to extort healthcare technology companies into using US Bancorp as the underwriter of capitalization against securities regulations and in denying [plaintiff] the escrow accounts it required to capitalize its entry into commerce through extortion under the color of official right - the USA PATRIOT Act." Further, plaintiff alleges defendants' "vertical integration is part of a calculated scheme to gain control over the $1.3 trillion health care supplier and distribution segment of the health care industry and to restrain or suppress competition," and that defendants "engage in predatory tactics and dirty tricks including . . . extortion [and] 'laddering' schemes to fraudulently inflate equity values of competitors they own interests in." Plaintiff claims defendants "invest in and promote engage in [sic] anticompetitive predatory sole source contract agreements." In addition, according to plaintiff, defendants have

gained "the power to control prices of health care supplies . . . that are higher than those negotiated directly by hospitals."

With regard to the effects of defendants' alleged actions, plaintiff states, without elaboration, that "new technologies have been prevented from entering the health care market," resulting "in the unavailability of superior products and services that would have been able to save lives and alleviate suffering." Further, plaintiff contends "[t]he public is being severely injured by defendants' actions" and that plaintiff "has been severely injured and is in danger of further injury."

The court construes plaintiff's complaint as attempting to state a claim of combination or conspiracy to monopolize. It is unclear whether plaintiff claims that actual or attempted monopolization occurred. Applying all three theories of recovery, the court finds that plaintiff has failed to state a claim under § 2.

"The offense of monopoly under § 2 of the Sherman Act has two elements: (1) the possession of monopoly power in the relevant market and (2) the willful acquisition or maintenance of that power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." *United States v. Grinnell Corp.*, 384 U.S. 563, 570-71 (1966). In the Tenth Circuit, "monopoly power is defined as the ability both to control prices and exclude competition." *Tarabishi v. McAlester Reg'l Hosp.*, 951 F.2d 1558, 1567 (10th Cir. 1991). Further, "determination of the existence of monopoly power requires proof of relevant product and geographic markets." *Id.*

Here, plaintiff has failed to allege that defendants both controlled prices and excluded competition. Further, plaintiff has not pled the existence of a relevant product market or geographic market. Plaintiff has not stated that defendants' alleged market power stems from defendants' willful acquisition or maintenance of that

power rather than from defendants' development "of a superior product, business acumen, or historic accident." The court finds plaintiff has failed to state a claim of monopoly under § 2.

To state a claim for attempted monopolization under § 2, the plaintiff must plead: "(1) relevant market (including geographic market and relevant product market); (2) dangerous probability of success in monopolizing the relevant market; (3) specific intent to monopolize; and (4) conduct in furtherance of such an attempt." *Full Draw Prods. v. Easton Sports, Inc.*, 182 F.3d 745, 756 (10th Cir. 1999) (citing *TV Communications, Inc.*, 964 F.2d at 1025). "Factors to be considered in determining dangerous probability include the defendant's market share, 'the number and strength of other competitors, market trends, and entry barriers.'" *Id.* (citing *Bacchus Indus., Inc. v. Arvin Indus., Inc.*, 939 F.2d 887, 894 (10th Cir. 1991). Plaintiff has neither adequately pled the existence of a relevant market nor alleged that defendants have a "dangerous probability" of success in monopolization. The court finds plaintiff has not stated a claim for attempted monopolization under § 2.

With regard to combination or conspiracy to monopolize, "[a] plaintiff must show conspiracy, specific intent to monopolize, and overt acts in furtherance of the conspiracy." *Monument Builders of Greater Kan. City, Inc. v. Am. Cemetery Ass'n of Kan.*, 891 F.2d 1473, 1484 (10th Cir. 1989) (*citing Perington Wholesale*, 631 F.2d at 1377; *Baxley-DeLamar Monuments, Inc. v. Am. Cemetery Ass'n*, 843 F.2d 1154, 1157 (8th Cir. 1988)). As with § 1, the court finds that plaintiff cannot state a claim for conspiracy because plaintiff has not alleged a plurality of actors and has made only very conclusory allegations of conspiracy. Thus, the court finds plaintiff has not stated a claim for combination or conspiracy to monopolize. Count I of the complaint is dismissed.

B. Clayton Act (Count II)

Plaintiff contends that defendants' refusal to provide escrow account services was a denial of a critical facility in violation of the Robinson-Patman Act, located at 15 U.S.C. § 13 of the Clayton Act. The Robinson-Patman Act, in part, makes it "unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers **of a commodity** bought for resale, with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms." § 13(e) (emphasis added).

The court finds plaintiff cannot state a claim under the Robinson-Patman Act, because the act prohibits only the sale of commodities. As numerous courts have held, the Act does not concern the sale of services, including financial services as provided by defendants in this case. *E.g., Metro Communications Co. v. Ameritech Mobile Communications, Inc.*, 984 F.2d 739, 745 (6th Cir. 1993); *Norte Car Corp. v. FirstBank Corp.*, 25 F. Supp. 2d 9, 18 (D.P.R. 1998). Count II is dismissed.

C. Hobbs Act (Count III)

Plaintiff states defendants violated the Hobbs Act's provision against racketeering, 18 U.S.C. § 1951(b)(2), "by preventing plaintiff's entry into commerce under color of official right." The court is persuaded by the findings of other courts which have determined that no private right of action exists to enforce the Hobbs Act. *See Wisdom v. First Midwest Bank of Poplar Bluff*, 167 F.3d 402, 408-09 (8th Cir. 1999) (citing cases and holding that "neither the statutory language of 18 U.S.C. § 1951 nor its legislative history reflect an intent by Congress to create a private right of action").

Even if such an action were authorized, there is no showing that defendants - private parties - acted with the requisite "official color of right."

> In general, proceeding against private citizens on an official right theory is inappropriate under the Act, irrespective of the actual control that citizen purports to maintain over governmental activity. Private persons have been convicted of extortion under color of official right, but these cases have been limited to ones in which a person masqueraded as a public official, was in the process of becoming a public official, or aided and abetted a public official's receipt of money to which he was not entitled.

35 C.J.S. *Extortion* § 12. The complaint contains no contention that defendants presented themselves as public officials or acted in any manner connected with a public official. Plaintiff cannot state a claim under the Hobbs Act. Count III is dismissed.

D. USA PATRIOT Act Claims (Counts IV-VI)

Prior to analyzing plaintiff's legal arguments, the court reminds plaintiff's counsel that, by signing the complaint and any other paper submitted to the court, he has certified, to the best of his belief and after a reasonable inquiry, that "the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11 (b)(2). Plaintiff's counsel is advised to take greater care in ensuring that the claims he brings on his clients' behalf are supported by the law and the facts.

Plaintiff seeks to bring claims that defendants failed to properly train their employees on the USA PATRIOT Act (hereinafter "Patriot Act") or provide a compliance officer related to the Act, violating section 352 of the Act, codified at 31 U.S.C. § 5318 (Count IV); "misused their authority" and engaged in excessive use of force as "enforcement officers" under the Act (Count V); and "violated criminal laws to influence public policy" under the Act (Count VI). The Act states, in relevant part,

> **(h) Anti-money laundering programs.--**
> **(1) In general.**--In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a

minimum--
(A) the development of internal policies, procedures, and controls;
(B) the designation of a compliance officer;
(C) an ongoing employee training program; and
(D) an independent audit function to test programs.

31 U.S.C. § 5318 (h).

First, with regard to Count IV, the court finds plaintiff lacks standing. The court is obligated to raise the issue of standing *sua sponte* to ensure that an Article III case or controversy exists. *PeTA, People for the Ethical Treatment of Animals v. Rasmussen*, 298 F.3d 1198, 1202 (10th Cir. 2002). "To establish Article III standing, the plaintiff must show injury in fact, a causal relationship between the injury and the defendants' challenged acts, and a likelihood that a favorable decision will redress the injury." *Id.* (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In ruling on a motion to dismiss for lack of standing, the court "must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Ward v. Utah*, 321 F.3d 1263, 1266 (10th Cir. 2003) (citing *Warth v. Seldin*, 422 U.S. 490, 501, (1975)).

Here, the court finds plaintiff lacks standing because it has failed to allege a redressable injury. Even if defendants failed to train their employees in order to guard against money laundering and also failed to designate a compliance officer as required by the Act, plaintiff has not pled that it was injured due to such omissions. Moreover, there is no basis to conclude that any order from the court directing defendants to comply with the Act could redress plaintiff's grievance that defendants denied plaintiff escrow services.

Second, the court finds that, even if Count IV were justiciable, no private right of action exists to enforce the Patriot Act. As a result, Counts IV, V, and VI fail to state a claim for which relief can be granted. Plaintiff

has not identified a provision of the Patriot Act expressly authorizing enforcement by private citizens. In its response to the motion to dismiss, plaintiff states that the failure to train and excessive use of force claims are actionable under 42 U.S.C. § 1983.

Section 1983 provides a cause of action against any person who, **under color of state law**, deprives a person "of any rights, privileges, or immunities secured by the Constitution and laws." § 1983 (emphasis added). The complaint has failed to allege that defendants acted under color of state law, an essential element of a § 1983 suit. *E.g.*, *Sooner Prods. Co. v. McBride*, 708 F.2d 510, 512 (10th Cir. 1983). Although plaintiff later states in its response that defendants acted "as an agent for the Department of the Treasury"[3] and that § 1983 liability may extend to private individuals if they engage in joint action with state officials, these allegations do not appear in the complaint and are, nevertheless, so conclusory that they cannot state a claim. *See, e.g.*, *Hunt v. Bennett*, 17 F.3d 1263, 1268 (10th Cir. 1994); *Sooner Prods. Co.*, 708 F.2d at 512. ("When a plaintiff in a § 1983 action attempts to assert the necessary 'state action' by implicating state officials or judges in a conspiracy with private defendants, mere conclusory allegations with no supporting factual averments are insufficient; the pleadings must specifically present facts tending to show agreement and concerted action."). In *Blessing v. Freestone*, the Supreme Court explained the factors courts must consider in determining whether a statute gives rise to a right enforceable under § 1983:

> In order to seek redress through § 1983, however, a plaintiff must assert the violation of a federal right, not merely a violation of federal law. We have traditionally looked at three factors when determining whether a particular statutory provision gives rise to a federal right. First, Congress must have

[3]Plaintiff's argument implicates action under color of federal rather than state law, thus giving rise to an action under *Bivens v. Six Unknown Agents of Fed. Bureau of Narcotics*, 403 U.S. 388 (1971), rather than § 1983.

> intended that the provision in question benefit the plaintiff. Second, the plaintiff must demonstrate that the right assertedly protected by the statute is not so "vague and amorphous" that its enforcement would strain judicial competence. Third, the statute must unambiguously impose a binding obligation on the States. In other words, the provision giving rise to the asserted right must be couched in mandatory, rather than precatory, terms.

520 U.S. 329, 340 (1997) (citations omitted). Plaintiff has not alleged the existence of any of these necessary elements.

Further, plaintiff has not attempted to state a claim that an implied private right of action exists under the Act. "A plaintiff asserting an implied right of action under a federal statute bears the relatively heavy burden of demonstrating that Congress affirmatively contemplated private enforcement when it passed the statute. In other words, he must overcome the familiar presumption that Congress did not intend to create a private right of action." *Casas v. Am. Airlines, Inc.*, 304 F.3d 517, 521 (5th Cir. 2002); *see also Cort v. Ash*, 422 U.S. 66, 78 (1975) (setting forth the four-factor test for whether a statute creates an implied private right of action as (1) whether plaintiff is a member of the class for whose benefit the statute was passed; (2) whether there is evidence of legislative intent, either explicit or implicit, to create or deny a private remedy; (3) whether it is consistent with the legislative scheme to imply a private remedy; (4) whether the cause of action [is] one traditionally relegated to state law so that implying a federal right of action would be inappropriate). The complaint alleges none of these elements.

Finally, with regard to Count VI in particular, in which plaintiff actually contends defendants "are preventing [plaintiff]'s entry into commerce in violation of Section 802 of the USA Patriot Act which creates a federal crime of 'domestic terrorism' that broadly extends to 'acts dangerous to human life that are a violation of the criminal laws," the court finds plaintiff's allegation so completely divorced from rational thought that the

court will refrain from further comment until such time as federal criminal proceedings are commenced, if indeed they ever are.

Counts IV, V, and VI are dismissed.

E. State Law Claims (Counts VII-XIII)

Federal district courts have supplemental jurisdiction over state law claims that are part of the "same case or controversy" as federal claims. 28 U.S.C. § 1367(a). "[W]hen a district court dismisses the federal claims, leaving only supplemented state claims, the most common response has been to dismiss the state claim or claims without prejudice." *United States v. Botefuhr*, 309 F.3d 1263, 1273 (10th Cir. 2002) (quotation marks, alterations, and citation omitted). If the parties have already expended "'a great deal of time and energy on the state law claims,' it is appropriate for the district court to retain supplemented state claims after dismissing all federal questions." *Vllalpando v. Denver Health & Hosp. Auth.*, 2003 WL 1870993, at *5 (10th Cir. 2003) (citing *Botefuhr*, 309 F.3d at 1273). Here, the court finds no compelling reason to retain jurisdiction over the state law claims, and dismisses them without prejudice.

IV. Order

IT IS THEREFORE ORDERED THAT defendants' Motions to Dismiss (Docs. 21, 23, and 25) are granted.

IT IS FURTHER ORDERED THAT defendants' Motion to Strike Plaintiff's Answer to Defendants' Reply (Doc. 30) is dismissed as moot.

IT IS FURTHER ORDERED THAT this case is hereby dismissed.

Dated this 16th day of June 2003, at Kansas City, Kansas.

s/ Carlos Murguia
CARLOS MURGUIA
United States District Judge